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12/14/95



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

December 14, 1995

VIA FAX
AND U.S. MAIL

George B. Davis
Varnum, Riddering, Schmidt & Howlett
Bridgewater Place
P.O. Box 352
Grand Rapids, Michigan 49501
FAX (616) 336-7000

Re: Albion-Sheridan Landfill Site
Albion, Michigan

Dear Mr. Davis:

This letter responds to your letter dated December 11, 1995, to Leah Evison, Remedial Project Manager, U.S. Environmental Protection Agency.

First, EPA disagrees with your position regarding, alleged "failure to identify and join all PRPs for the Site, and Lack of Joint and Several Liability". Where the harm is indivisible, as in this case, the liability of the PRPs is joint and several under § 106(a). See Northeastern Pharm. & Chem. Co., 570 F. Supp. 823 (W.D. Mo. 1984), modified, 810 F. 2d 726 (8th Cir. 1986); and U.S. v. Conservation Chemical Co., 589 F. Supp. 59 (W.D. Mo. 1984)).

EPA also disagrees with your allegations regarding "lack of any 'imminent and substantial' endangerment". Not only is the actual harm at the Site "imminent", but "imminent" includes situations where the risk of harm, as opposed to any actual harm, is imminent. See U.S. v. Conservation Chemical, 619 F. Supp. 162, 193 (D.C. Mo. 1985). Similarly, the City's alleged violations of its "right to due process" are equally unfounded.

You further suggest, by your December 11, 1995 letter, that your "den[ial] that the City is a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and [specific denial] that the City is subject to the UAO under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a)" somehow constitutes a "sufficient cause defense". Surely you realize, that if a party's mere assertion of non-liable were sufficient to show "sufficient cause", Section



106 of CERCLA would be meaningless, as every respondent to a UAO would make such an assertion, thereby avoiding liability under Section 106. For this and reasons set forth in EPA's letter to you dated December 12, 1995, EPA disagrees that the City has put forth, or could put forth, a "sufficient cause defense" to not comply with the UAO.

You further claim that, "until there is some meaningful response by EPA to our settlement offer, the City is not in a position to indicate whether or not it intends to comply with the UAO as provided by UAO paragraph 85". While I do not intend to presume a definition of 'meaningful' within the context of your December 11, 1995 letter, EPA responded by telephone to the City's offer on several occasions and by letter dated December 12, 1995. As you may recall, the City's offer was rejected on each of those occasions.

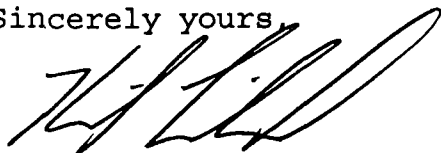
Also, as I indicated to you by telephone on December 11, 1995, and apparently before you sent your December 11, 1995 letter, the City may be subject to a penalty of up to \$25,000 per day for each day of violation under Section 106 of CERCLA, if it refuses to comply with the UAO on or before the effective date. Failure to indicate an unequivocal intent to comply with the UAO is a violation of the UAO. Your letter dated December 11, 1995 constitutes failure by the City to indicate its intent to comply with the UAO, and thereby may subject the City to a penalty of up to \$25,000 per day for each day of violation beginning December 12, 1995.

Further, your request that EPA "withdraw or dismiss the UAO" is denied. Whether EPA and the City are able to reach an agreement on some future date is not determinative of the City's liability under Section 106 of CERCLA, including its liability for failing to comply with the UAO, except to the extent that any future settlement may require a payment for penalties under Section 106 of CERCLA.

Notwithstanding any assertion or allegation contained in the foregoing, EPA reserves, and this letter is without prejudice to, any right or claim EPA may have against the City of Albion, under CERCLA, or any other applicable law or regulation.

If you have any questions regarding this matter, please do not hesitate to call me at (312) 886-6831.

Sincerely yours,



Kurt N. Lindland
Assistant Regional Counsel